

# CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

## (a) PLAINTIFFS

Jill Scott and Stuart Scott, Individually  
and as Next Friends of Madison Scott

## DEFENDANTS

Baylor University Medical Center

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Collin

(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Dallas

(IN U.S. PLAINTIFF CASES ONLY)

NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS AND TELEPHONE NUMBER)

Frank Branson - Attorney in Charge  
4514 Cole Ave. 18th Floor  
Dallas, TX 75205

Alice Oliver-Parrott - Guardian Ad Litem

ATTORNEYS (IF KNOWN) (SEE SUPPLEMENT CIVIL COVER SHEET)

James M. (Mac) Stewart - Attorney in Charge  
John A. Scully

## II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 2 U.S. Government Defendant  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only) (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- Citizen of This State PTF DEF ☐ 1 ☐ 1 Incorporated or Principal Place of Business in This State PTF DEF ☐ 4 ☐ 4  
Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5  
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

## IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 Original Proceeding  
☒ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
Transferred from another district (specify) ☐ 5  
Appeal to District Judge from Magistrate Judgment ☐ 6  
Multidistrict Litigation ☐ 7

## V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans' Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 810 Agriculture <input type="checkbox"/> 820 Other Food & Drug <input type="checkbox"/> 825 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 830 Liquor Laws <input type="checkbox"/> 840 R.R. & Truck <input type="checkbox"/> 850 Airline Regs. <input type="checkbox"/> 860 Occupational Safety/Health <input type="checkbox"/> 880 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395m) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DRWC/DWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7809	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 610 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 881 Agricultural Acts <input type="checkbox"/> 882 Economic Stabilization Act <input type="checkbox"/> 883 Environmental Matters <input type="checkbox"/> 884 Energy Allocation Act <input type="checkbox"/> 885 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 980 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 448 Other Civil Rights <b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>HABEAS CORPUS:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 545 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 750 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		

## VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

28 U.S.C. § 1331 and 28 U.S.C. § 263(a)

Removal of state court lawsuit.

## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐

DEMAND \$

CHECK YES only if demanded in complaint.

JURY DEMAND: ☐ YES ☐ NO

## VIII. RELATED CASE(S) (See instructions) IF ANY

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

6/17/02

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG JUDGE \_\_\_\_\_

## JUN 17 2002

**CLERK, U.S. DISTRICT COURT**

By \_\_\_\_\_ Deputy

No. \_\_\_\_\_

**Defendant.**

**TO THE HONORABLE JUDGE OF SAID COURT:**

## I. INTRODUCTION

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2. This Notice of Removal is filed within thirty (30) days of receipt of service of said supplemental petition. Accordingly, this removal is timely filed under 28 U.S.C. § 1446(b). This action is removed pursuant to 28 U.S.C. § 1441(b) as an action over which this Court has original jurisdiction under 28 U.S.C. §1331.

3. Venue is proper in this division and district for the reason that Plaintiff's Petition was filed in Dallas County, Texas, which is within the Dallas Division of the United States District Court for the Northern District of Texas. 28 U.S.C. § 124(a)(2).

4. This is a medical malpractice suit filed in 2000 by Plaintiffs for negligence in connection with a supplemental newborn screening program. Despite the fact that this case has been on file for two years, in the Third Supplemental Petition, Plaintiffs have alleged for the first time that Defendant committed negligence by "failing to comply with CLIA" (the Clinical Laboratory Improvement Act), a federal statute codified at 28 U.S.C §263(a). See Petition at page 7, paragraph 8.04 (K). Because Plaintiffs now allege that Defendant violated a federal statute, this case now arises under federal law and is removable to federal court.

5. Under 28 U.S.C. § 1441(c), removal is permitted of entire cases where this Court has original jurisdiction as to any claim against any defendant. Accordingly, so long as one of Plaintiffs' claims against this Defendant is subject to federal jurisdiction, this Court can take jurisdiction over the entire case. Therefore, based on the claims asserted in Plaintiffs' Third Supplemental Petition, this action is removed on the following independent grounds:

(a) This is a civil action of which this Court has original jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 263a. One or all of Plaintiffs' claims against this Defendant

arises under and are within the scope of 28 U.S.C. § 263a, the Clinical Laboratory Improvement Act (“CLIA”)

6. This suit is also removed under 28 U.S.C. § 1441(b), because one or all of Plaintiffs’ claims against this Defendant cannot be determined without reference to or interpretation of federal law. Thus, the case turns on the construction of federal law and arises under federal law. *City of Chicago v. International College of Surgeons*, 118 S. Ct. 523, 529-30 (1997).

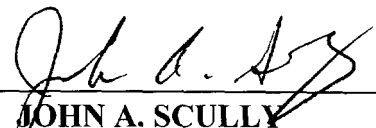
7. No previous application has been made for the relief prayed for in this Notice.

8. In filing this Notice of Removal, Defendant does not waive and expressly reserves all objections and defenses which it may have under Rule 12(b) of the Federal Rules of Civil Procedure and any other rules applicable to this action.

9. Written notice of the filing of this Notice of Removal will be given to Plaintiff and a copy of this Notice will be forthwith filed with the clerk of the County Court at Law Number 5 in Dallas County, Texas.

Respectfully submitted,

**COOPER & SCULLY, P.C.**

By :   
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UNIVERSITY MEDICAL CENTER**